IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.703 OF 2001

Praful Sudhakar Parab]
age 24 years, occupation]
police constable, residing]
at Hari Om Society,]
Plot No.386/43-D,Sector-3]
Charkop, Kandivali (West)] Appellant/
Mumbai - 400 067.] ori.accused

versus

The State of Maharashtra] Respondent

Shri P.M. Pradhan, Senior Counsel, instructed by
Shri A.R. Pitale, Advocate, for the Appellant.
Smt. Usha Kejariwal, A.P.P. for the Respondent.

Coram : N. V. Dabholkar and
Smt.V.K.Tahilramani,JJ.

Reserved on: 30/01/2006.
Pronounced on: 14/02/2006.

Oral Judgment ((Per: Dabholkar, J.)

1. Sessions Case No. 459 of 1997 was concluded by Additional Sessions Judge for Greater Bombay, vide his judgment and order dated 31.7.2001. Present appellant was tried for offences punishable under Sections 364 and 302 of Indian Penal Code. At the conclusion, he was held guilty for committing murder of Prabhudas Narayan Raut, and sentenced to suffer life imprisonment, to pay a fine of Rs.5000/=, in default, rigorous imprisonment for three months. Feeling aggrieved by the said finding of guilty, conviction and sentence, original accused has approached this court, by this appeal under Section

374(2) of the Code of Criminal Procedure, 1973.

2. The accused Praful and victim Prabhudas, both were members of State police force at the time of the incident. The incident in question is said to have taken place some time after 7.00 p.m. of 7.12.1996. The accused, at that time, was working as pay-sheet clerk, attached to LA-IV, Police Training Centre, Marol. In that capacity, his duty was to disburse salary amount, as also amount of other allowances, received from head clerk, to the police staff. Before transfer to LA-IV, he was attached to Police Training School ('PTS', for short). Deceased Prabhudas Raut was senior clerk in the salary branch of PTS.

. Sudhakar Parab (PW-17), father of the accused, was also serving as head constable with the police department, since 30 years prior to the incident. He was residing at Goregaon. It is the claim of the prosecution that, although initially, accused was residing with his father, he was forced by father to leave the house, in view of vices to which the accused was addict, i.e. consumption of liquor, attending the bar and spending lavishly on dancing girls etc. Due to such habits, the accused was always in need of money.

. On 7.12.1996, Saturday, Prabhudas (victim)

attended his duties and left the office at about 6.30 p.m. with Dilip Waingankar (PW-2). While returning home, Prabhudas, carried with him four cash books, a day-book, RBI voucher, a calculator and a bunch of keys, in a bag. PW-2 Dilip and Prabhudas separated for respective homes, from Jogeshwari at about 7.30 p.m.

. At about 8.00 p.m., while victim Prabhudas was at his residence along with his wife Kalpana (PW-8) and son Anish (PW-11), accused Praful approached him and informed Prabhudas that his presence is required at the office, by his superior Shri Patil. Prabhudas did not believe the message. He sought confirmation, by a telephonic call and realised that, the message given by the accused was false one. Prabhhudas returned home, by leaving accused outside the house. He assured his wife to investigate on Monday, as to who had given such a false message. At about 9.00 p.m., the deceased Prabhudas and wife Kalpana went to a telephone booth and while Kalpana was having conversation with her brother, accused reached house of the victim. He learnt whereabouts of the couple, from child Anish and approached them at the telephone booth. There, accused again persuaded Prabhudas to accompany him to the office. After telephone call of Kalpana was over, all three returned to the house of Prabhudas. Accused consumed a glass of water, the victim took up the bag

brought from the office, with all its contents and left the house with the accused. It is the case of the prosecution that, after this departure, Prabhudas never returned.

. On 8.12.1996, at about 8.00 a.m., Kalpana contacted Marol office, for enquiring whereabouts of her husband. She was informed by telephone operator that, nobody had gone to Marol office, PTS on the preceding night. Consequently, she informed her relatives and search for deceased Prabhudas began.

. Kalpana along with her relative Santosh Shedge (nephew) visited Police Inspector Shri Suryawanshi at PTS, Marol. She also enquired with the officers and policemen at Naigaon office. Police Constables Sanap and Khamkar, colleagues of the deceased, suggested to Kalpana that she should find out person with whom her husband had departed on earlier night.

. While departing on earlier night, Prabhudas had informed Kalpana that, she need not be worried, since the person, with whom he was going, was nephew of one Shri Sawant, residing in the neighbourhood. In search of the accused, Kalpana approached Sawant family. Shri Sawant took Kalpana to the house of his sister i.e. mother of of the accused. Although, accused was not

present there, mother of the accused showed a photograph of the accused to Kalpana. From the photograph, Kalpana identified him to be the person with whom her husband had left on the former night.

. After Kalpana returned home, she was informed by Sawant family that accused was available at their residence. Kalpana went to residence of Sawant family and questioned accused present there, regarding whereabouts of her husband. The accused was evasive and, therefore, Kalpana suspected foul-play, on the part of the accused. With the help of Devidas Raut, (PW-4), her brother-in-law and one Dattatraya Tembhekar, Kalpana managed to take the accused to police station. Dilip Shinde (PW-20), PSI attached to Meghwadi police station, who was on duty as Station House Officer (SHO, for short), upon hearing from Kalpana, reported the matter to his superior, Police Inspector Shri Sonar (PW-21) and as directed by PI Shri Sonar, Shri Shinde recorded statement of Kalpana and treated the same as missing report (Exh.22).

. During interrogation, accused informed PSI Shri Shinde that, he had left deceased Prabhudas, along with couple of his friends, namely, Dalvi and Waingankar in a hotel at Panvel. PI Sonar, PSI Shinde took the accused to Panvel and upon enquiries in the hotel, called "Suman

Motels", which was pointed out by the accused; they were informed that no such persons, named, Prabhudas, Dalvi and Waingankar, visited or stayed at the said hotel. In fact, police authorities were informed that the hotel was exclusively for members only.

. Persistent interrogation of the accused ultimately bore the fruit. The accused disclosed that he had committed murder of Prabhudas Raut and he also disclosed the date, time and the place of committing the said offence. (In fact, this narration of the accused, being confessional statement to police officer Shri Shinde, is not admissible confession, by virtue of section 25 of the Indian Evidence Act). According to this statement, accused was furious about the deceased, since the deceased had ridiculed the accused, on the point of accused having married a bar girl, named, Helen Fernandes. When this was revealed by accused, at 5.30 a.m., police, along with the accused, went to the scene of offence, a location between Jogeshwar-Vikroli link road and Marol pipeline, the accused showed the spot, so also the dead body of victim Prabhudas, in side the pipe. This was verified in the light of police van and search light. As it was dark, it was decided to conduct the panchanama proceedings etc. in the day light. The two guards were posted at the location, including PW-5 Yusuf Mulla and the party returned to police station.

FIR (Exh.51) was written by PSI Shri Shinde after confirmation of statement of the accused, by verifying existence of dead body etc. This was because, on earlier occasion, the accused had misguided the police to a Panvel hotel. Consequently, arrest of the accused was effected at about 7.00 a.m. vide panchanama of arrest at Exh. 39. With the arrest panchanama, belongings on the person of the accused, were taken charge of, which included jean pant (black colour), a shirt (green with red checks), cash of Rs.2084, identity card etc., including key chain having two keys. While drawing panchanama of the location, three shirt buttons, one rubber slipper, wrist watch, cash, bunch of keys (belongings on the person of the deceased and articles lying around) were seized under panchanama of seizure (Exh.24). In fact, this panchanama is a very curious document. It is a composite document, which contains certain details pertaining to narration by the accused, and it also contains details, which can be termed as ‘panchanama of scene of occurrence’, and it also contains the details of the dead body, which can be termed as ‘inquest’. The dead body was identified by PW-14 Devidas (brother of the victim).

. Upon further interrogation, it is said that, accused showed willingness to give out clothes worn by him at the time of commission of offence and that

discovery was under panchanama (Exh.35) drawn in presence of panch witness Waman Gujaran (Exh.13). At the instance of information given by the accused, bunch of keys and black bag are also said to have been discovered, which were kept by him in the armory. The memorandum and panchanama to that effect are at Exhibits 30 and 30-A.

. After other part of investigation, such as, recording of statements of witnesses, obtaining post mortem report after subjecting the dead body to autopsy and obtaining reports of analysis, by sending seized articles to Forensic Science Laboratory, charge sheet was submitted in the court of 44th Metropolitan Magistrate, on 7.3.1997. After committal by Metropolitan Magistrate, the trial before the Additional Sessions Judge, Greater, Bombay, ended in conviction as described above.

3. The prosecution has, in all examined 21 witnesses and according to their importance, they can be grouped as under.

. PW-5 Police Constable Yusuf Mulla, was the PSO at Meghwadi Police Station, from 6.00 p.m. from

8.12.1996 till 10.00 a.m. on the next morning. Kalpana (PW-8), the wife of the deceased, had approached to the police station, next day morning. At 17.15 hours, she had brought the accused with her and reported to PSI Dilip Shinde, that her husband was called and taken by the accused on 7.12.1996. Her narration was registered as missing report, by Shri Mulla. Shri Mulla had accompanied PI Sonar, PSI Shinde and the accused, to Suman Motels at Panvel. Shri Mulla and Police Constable (Bk.No.2763), were the persons asked to stay back, since it was decided to draw the panchanama in the morning. Consequently, he has witnessed all the events recorded in the panchanama (Exh. 24). PW-8 Kalpana Raut is the widow of the victim. Her evidence is important on the point of 'last seen together' and the manner in which she searched, traced out and presented the accused to Meghwadi Police Station. PW-9 Arvind Veerkar is a panch witness and panchanama (Exh.24) was drawn in his presence. Another panch witness Suresh Patil (PW-10) was present when black rexin bag and its contents were discovered from the guardroom, at the instance of the accused, vide panchanamas (Exhs.30 and 30-A). This panchanama was drawn by police constable Bhiva Parab (PW-6). PW-15 Shantaram Sawant is the maternal uncle of the accused, residing in the same locality, where, the deceased was residing. He has rendered full support to the deposition of Kalpana, regarding search and

apprehension of the accused.

. Apart from PWs. 5,6,9 and 10 referred in above parabgraph, as they are the witnesses to seizure of certain articles, PW-16 is also panch witness to arrest panchanama (Exh.39) and seizure of belongings of the accused, under the said document.

. The prosecution has examined four witnesses, who speak about bad habits of the accused and, therefore, his consistent need for money. This team of four witnesses, includes father of the accused, namely, Sudhakar Parab (PW-17), who had directed the accused to stay separately, if the accused could not leave without bad habits. Father also supports the case, by informing that on 8.12.1996, the accused had been to his residence for taking bath and seizure of clothes of accused by PSI Shinde on 9.12.1996 from his house. PW-4 Vasant, ASI, who was SHO on the night between 7th and 8th December, 1996, was reported by police constable More, that the accused had demanded the keys of pay office, on that night, which were denied to accused by police constable More. PW-12 Ramchandra Bandekar, another police constable, had lent an amount of Rs.2000/= to the accused, in April,1996. The accused had failed to return the same, and in December 1996, Ramchandra had seen the accused flinging currency note of Rs.500/= at

dancing girls at Sancheti Bar, near Goregaon Railway station. PW-18 Chandrakant Rane is receptionist of Hotel Woodland and has deposed about three visits of accused to the said hotel on 4th, 6th and 7th December, 1996 and short stay there, with girl named Kajal.

. PW-3 Arun Dhole is a person from whom the accused had borrowed a T-shirt on the night of 7.12.1996 at about 11.30 p.m. He had also served water to the accused at his request. PW-19 Dr. Manik Sangle had carried out post mortem on the dead body of victim Prabhudas.

. Remaining witnesses are comparatively of lesser importance. PW-1 Pradip (head constable) was telephone operator, from whom the deceased had confirmed that the message by the accused was not true. PW-2 Dilip is colleague of the deceased. On 7th evening, the two had left the office together and had separated for respective residences, from Jogeshwari at about 7.30 p.m. Evidence of PW-11 Anish, minor son of Kalpana and the deceased, is on the same line as that of Kalpana, on the point of ‘last seen together’. Waman Gujran (PW-13) is the panch witness to panchanama (Exh.35), under which, shirt, jean pant and boots of the accused were seized. PW-14 Devidas Raut is the brother of the deceased, and he had identified the dead body at the

location. PW-20 PSI Shinde and PW-21 Senior PI Sonar are the Investigating Officers. Evidence of PW-7, Ashok Jadhav, has become irrelevant, since it appears that for non return of cash by the accused, which was entrusted to him for disbursement, and about which PW-7 has deposed, separate prosecution was conducted against the accused.

4. So far as defence of the accused is concerned, to the concluding question, in his statement under Section 313 of the Code of Criminal Procedure, as to whether he desired to say anything more, the accused responded by saying ;-

> " On 8.12.96, I was in my office distributing salary. It was Sunday. Sanap & Khamkar come to me telling that we should go to Khandare for Puja. As we went to Jogeshwari, there we came near the house of my maternal uncle. We went inside the house of my Mama (maternal uncle). Sanap and Khamkar pointed out to 10-12 persons present over there, that i was the same Prafulla Parab. After some time, Kalpana Raut and my mama arrived there. Kalpana Raut asked me, if I had gone to her house on the last night. I denied. From there, I was taken to police stn. Kalpana Raut pointed out to P.S.I. Shinde that

I had visited her house. I had denied that version. On the morning, I was arrested. "

. In response to question No.7, about his identification by Kalpana (PW-8) at the place of his maternal uncle Shantaram Sawant (PW-8) on 8.12.1996, accused responded by saying that, he was sitting in the house of his maternal uncle. and he had stated that he had not gone to house of deceased on 7.12.1996.

. While replying question No.8, he admits that he went to Meghwadi police station at 7.15 p.m., with Kalpana. He denies to have narrated to the police, story of having reached the deceased along with his colleagues Waingankar and Dalvi at hotel at Panvel. He also denied to have led the police to Suman Motel at Panvel. He also denied that he was teased by any other colleagues, on the point of his marriage with Helen Fernandes.

. By replying question No. 15, " It is all false", he has denied discovery of dead body at his instance, but he has admitted seizure of articles as recorded in arrest panchanama (Exh.39) and in response to question Nos.17 and 18, he admitted that police had taken him to the spot but he claimed that the articles allegedly recovered from the location (vide exh.24),

were being seen by him for the first time, in the court. According to him, his clothes were seized from the police station and not from the residence of his father. About missing of three buttons from his shirt, he claims that he is unaware, whether that was done after his shirt was seized by the police. He denied to have borrowed T-shirt from PW-3 Arun, or to have demanded keys of salary branch, from police constable More, on the night of 7th and 8th December.

. In replies to question Nos. 39 and 40, accused admits to have visited house of his father Sudhakar Parab on 8th morning, and departed after taking bath. He has denied his stay at hotel woodland with girl Kajal. When confronted with medical evidence, accused pleaded ignorance about the same.

. It can be said that, the accused has not raised any concrete defence, but has tried to deny all the averments of the prosecution, suggesting him to be guilty of the murder.

5. By the impugned judgment, the trial court held that the death of Prabhudas was homicidal and the appellant-accused was responsible for the same. Consequently, the accused is held guilty for offence punishable under Section 302 of IPC. So far as offence

punishable under Section 364 IPC (abduction) is concerned, the trial court observed that the said charge does not survive. The reasons for such finding, as recorded in paragraph 43 of the judgment, tried to be criticised by Shri Pradhan, learned Counsel for the appellant. However, we have prevented him from doing so, in view of the fact that the consequent acquittal recorded in favour of the appellant, so far as offence under Section 364 IPC is concerned, is not under any challenge by the State.

. For the reasons recorded in paragraphs 21 and 22, learned trial Judge had shown inclination to believe evidence of PW-8 Kalpana and PW-11 Anish (wife and son of the deceased) After discussing evidence of two Investigating Officers, PSI Shinde and PI Sonar, as also PW-5 Mulla and panch witness Arvind (PW-9) together with identification evidence of the brother of the victim, namely, Devidas ((PW-14), in paragraphs 23 to 25 of his judgment, the learned Judge discussed the medical evidence as rendered by Dr. Manik Sangle, p.m. notes and also panchanama (Exh.24), which also includes inquest portion, the learned Judge arrived at a conclusion that the death of Prabhudas was homicidal. Learned Judge rejected the argument of the defence counsel that the missing report lodged by Kalpana (Exh.22) was the genuine FIR and not the formal

complaint (Exh.51) tendered by PSI Shinde, after almost all the investigation. The trial court seems to be in agreement with the defence counsel that the confessional portions in Exhibits 51 and 51-A, are hit by section 25 of Indian Evidence Act and, therefore, inadmissible in evidence.

. After considering evidence led by the prosecution, in the form of depositions of Kalpana and her son Anish, PW-3 Arun, who had lent T-shirt to the accused, PW-17 Sudhakar (father of the accused), PWs. 6 and 10, namely, Police Constable Bhiva and panch Suresh (discovery panch to panchanamas Exhibits 30 and 30-A and regarding discovery of black bag and its contents from guardroom, as also evidence of two Investigating Officers, regarding various panchanamas, the trial judge summed up his conclusions in paragraph 40 of the judgment, as to the circumstances established by the prosecution, which show compatibility of the accused in relation to crime in question. The trial judge observed thus;

> " The unshaken testimoney of the Kalpana Raut (PW-7), her son Anish Raut (PW-11) clearly indicate that by misrepresentation the accused taken the Prabhudas Raut with an intention to commit murder and the chain of events from

taking him from his house, getting T-Shirt from the PW-3 Arun Dhole, washing his clothes in the house of his father (as stated by PW-17, Sudhakar Parab), then recovery of art. No.18 with detached buttons of the shirt and then the recovery of bunch of keys (art.5) on 9.12.96 as per the statement of the accused, forms a complete chain of events and cumulatively shows that there is no escape from the conclusion that it was the accused who could have committed the offence of responsible for the homicidal death of deceased Prabhudas Raut. "

. So far as motive is concerned, the trial court has referred to evidence of father Sudhakar (PW-17), Head Constable Ashok Jadhav (PW-7), Police Constable Ramchandra Bandekar (PW-13) and arrived to the conclusion as follows;-

" .....

There can be a reasonable presumption, which can be drawn from the testimony of the above said witnesses that the accused as (was) misappropriating the amount which was given to him for disbursement of (to) the employees of LA-V and in order to make the good

> amounts of his extravagant expenses, the accused wanted to open safe with the keys in possession of Prabhakar (Prabhudas) Raut and for that purpose, he committed the murder and snatched the keys from his bag and then had gone to PTS, Marol and kept bag inside the rifle stand. "

. While deviating from the initial case for motive, the trial court observed that the accused made a false statement about his being teased by the victim, on the point of his marriage with Helen Fernandes. The trial court also observed that, it was the accused, who had knowledge about the location of the dead body. Thus, impliedly, the trial court has accepted the prosecution story about the discovery of dead body at the instance of the accused.

. For these reasons, the trial court has accepted that the prosecution has established the circumstances, unerringly pointing towards the guilt of the accused.

6. Heard Shri Pradhan, learned Counsel, with Shri Pitale, Advocate for the appellant, and APP Smt. Usha Kejariwal for Respondent-State.

. As expected, learned Counsel for the appellant has seriously assailed the circumstances relied upon by the prosecution and held proved by the trial court, and pleaded that those are not proved by reliable and cogent evidence. So far as prosecution story that, three detached buttons were recovered at the location and near the dead body (Exh.24) and the shirt of the accused was seized under panchanama (Exh.35), is concerned, it was submitted that such a picture could be painted by the prosecution. This is because, the accused was practically in police custody, since evening of 8th December, when Kalpana presented him before the police. Even technically, the accused is shown arrested at 07.10 hours (Exh.39) and recovery of loose buttons at the location under panchanama (Exh.24), was at 8.10 hours. Seizure of the clothes from the house of father under Exhibit 35, is shown at 11.30 hours. Painting a picture by manipulation, it was submitted; was not impossible.

. Evidence of Kalpana, regarding victim last being seen alive and in the company of accused, is urged to be disbelieved, by relying upon medical evidence. The post mortem notes at Exh. 44, show that the stomach and small intestine of the victim was empty, as against the case of Kalpana that the accused took the victim only after Kalpana and victim had come down to STD booth, for conversation with brother of Kalpana and that too after

dinner. It was submitted that, a possibility cannot be ruled out that the victim had gone away with someone else , without returning home after office hours on 7th December and that is why the victim is seen to be empty stomach, in the post mortem report.

. This evidence of last seen together of Kalpana is challenged from another angle. This is because, although Kalpana claimed that she had taken a photograph of accused from his mother, has not produced the same before the court, by offering a very flimsy explanation that it fell down and is lost. In this context, a reference is made to answer to question No. 52 by accused in his statement under Section 313 of the Cr.P.C., wherein he has pleaded that, on seeing accused at the place of his maternal uncle, Kalpana had questioned him, whether he was the person, who had visited her house and taken the victim on the former evening.

. Discovery of rexine bag and key bunch of the victim within it, at the instance of the accused from the guardroom, according to learned defence counsel; is unreliable piece of evidence. This is because, as per Exhibits 30 and 30-A, discovery was at 19.00 hours on 9.12.1996. As against this, PW 2 Waingankar, in his evidence paragraph 6 and 13, has clearly admitted that,

he was shown the articles on 9.12.1996, during office hours, which must be before 19.00 hours.

. The challenge to treat Exhibits 51 and 51-A as FIR, is raised even before this Court and the learned Counsel has not failed to repeat that anything stated by PSI Shinde in this document, as narration of the accused, is inadmissible in evidence, if that is a confessional statement, due to bar of section 25 of the Indian Evidence Act. The claim of the prosecution regarding discovery of dead body at the instance of information by accused, is desired to be disbelieved by the learned Counsel for accused, due to absence of conventional documentation, such as, memorandum of statement of accused duly signed by him, in testimony of statement being voluntary and panchanama recording manner of discovery. It was also submitted that, need of money was not sufficient motive for the accused to commit murder.

. According to learned Counsel for the appellant, the prosecution has not proved beyond reasonable doubts, the circumstances, viz. last seen together, discovery of dead body at the instance of the accused, discovery of key bunch of the victim at the instance of the accused, as also the motive. The story of recovery of loose buttons at the location and missing of three

buttons of the shirt of the accused, recovered from the residence of his father, according to learned counsel for appellant; can be an engineered story. An acquittal for the appellant is, therefore, prayed for, by setting aside the impugned judgment and order.

7. According to learned APP, following circumstances are established with firmness, on the basis of cogent evidence by the prosecution, which unerringly point out guilt of the accused and rule out any hypothesis of his innocence.

(i) Last seen together.

(ii) Discovery of dead body at the instance of the accused.

(iii) Discovery of key bunch of the victim from the constructive custody of the accused.

(iv) Recovery of shirt of the accused from his father's place with missing buttons which were traced at the location.

. According to learned APP, even conduct of the accused provides additional link, of misleading the police machinery to Panvel, change of shirt with the help of PW-3 and demand of keys of pay office, to Police Constable More, as reported to ASI Shri Vasant Joshi (PW-4). According to learned APP, the fact that the colour of shirt seized at the time of arrest and seizure from the house of father, are different and that should provide an answer to hypothetical argument for the

appellant that, the story regarding loose buttons is engineered. According to learned APP, on the contrary, the same is a very clinching circumstance. Learned APP urged that the impugned decision may not be disturbed.

8. Although during the course of her arguments, learned APP has not led much emphasis on the aspect of vices of the accused, about which evidence is brought on record, it also needs to be considered that the evidence regarding vices of the accused is not challenged by the defence with much success. Learned Counsel for the appellant, has posed a very limited challenge to this aspect, by saying that the constant need of money was not adequate motive to commit murder of the deceased. We are inclined to disagree with this proposition of the learned Counsel. The extent, to which a person greedy of money may go, can be an issue of guess-work and the limits of each individual may vary. It will not be a safe proposition that because of constant need of money, accused could not have committed murder.

. Evidence of bad habits of the accused and, therefore, his need of money, has mainly come on record in the depositions of PW-12 Ramchandra Bhandekar, PW-17 Sudhakar (father of the accused) and PW-18 Chandrakant,

a receptionist of hotel Woodland. This need of money is linked to the actions of the accused, immediately succeeding the alleged murder, with evidence by PW-4 Vasant Joshi, ASI. According to pw-12 Ramchandra, who is also a policeman, he had lent an amount of Rs.2000/- to the accused, sometime in April 1996 and accused had returned only amount of Rs.500/-. After 2-3 months, Ramchandra learnt that there was a quarrel between accused and his father and accused was required to leave the house of his parents. He, therefore, sent repeated messages to accused, requesting accused to come and see him and repay the balance amount. What was the outlet for the pocket of the accused is evident from further deposition of Ramchandra. In December, 1996, Ramchandra learnt that the accused was in habit of sitting at liquor bars. On 4th or 5th December, he had been to Sancheti Bar at Goregaon to meet the accused. The accused was busy consuming liquor and he was also making a show of his richness, by flinging currency notes at the girls dancing at the bar. These were not the currency notes of trifle denomination, but of Rs.500/- each. The accused was seen leaving the bar at 01.00 hours past mid night. In the cryptic cross-examination of this witness, the defence has not been able to bring on record anything, by which we can be persuaded to disbelieve him. The witness could not answer why he was summoned by police on 5.1.1997, in connection with this

case. Although witness expressed his inability to know the reasons for such call, the explanation is obvious. It was a locality occupied by persons belonging to police department and almost all the inhabitants must be knowing not only each other, but to a considerable extent; they must also be aware of activities of each other. That, Ramchandra was called after investigating agency believed that the accused was the culprit, probably indicates that, the investigating agency was made aware of the vices of the accused. This, in turn, leads to an inference that vicious habits of the accused must, be well-known in the locality.

. PW-18 Chandrakant has deposed about visits of the accused to hotel Woodland on 4th, 5th and 7th December. He appears to have checked in at 3.00 a.m., 2.45 a.m. and 1.00 a.m. respectively, on these days. According to Chandrakant, accused was accompanied by a girl Kajal. Chandrakant was deposing after referring to the check-in register of the hotel. The rates of the hotel are brought on record during cross examination and those were from Rs.300 to Rs.500/= per day. Except bare suggestion that the accused had never visited the hotel, or that the witness Chandrakant is deposing false to that effect, which suggestions are denied by the witness, nothing useful could be drawn out from this cross-examination.

. Deposition of PW-17 Sudhakar, the father of the accused, must be a bolt from the blue. The father has deposed that, accused was frequently found in drunken condition. He was accustomed to come home at very late hours and he had asked the son to stay separate, if he could not discontinue his bad habits. According to father Sudhakar, accused had started leaving separately, since about 5 months prior to the incident. In spite of separation, father was worried about the son, which is evident from paragraph 3 of his deposition. He had asked police officer Shri Kadam to keep watch on the accused, so that he could be kept under check. In the cross examination, the defence has not dared even to put a suggestion to father that, he is deposing false to above effect.

. Relying upon these three witnesses, it must be said that the prosecution has sufficiently established on record that, the accused was addicted to vices of all types and naturally, he must be in constant need of more and more money. The statement of PW-4 ASI Vasant Joshi, must be considered in the light of this style of life of accused. No doubt, the prosecution has not examined constable More, who could have given additional evidence on the incident, which the prosecution has brought on record, through ASI Joshi. According to Shri Joshi, on

8th December 1996 morning, when he resumed his duties at 7,30 a.m., accused was standing in front of the office and Shri More reported to Shri Joshi that, the accused was demanding keys of salary branch. Shri Joshi had interrogated the accused and the accused had continued his attempt for entry in the office, by informing Shri Joshi that, he had forgotten his keys in the salary branch of office. 8th December, 1996 being a Sunday and holiday, Shri Joshi refused to handover keys to the accused, of salary branch. The fact remains that on 8th December morning, the accused had tried to effect his entry in the salary branch and in the absence of deceased. (According to PW-2 Dilip, the deceased was also entrusted duty of making payments of salary and thus, it can safely be inferred that the deceased must also be having his own cupboard or safe for cash in his custody.) It is the case of the prosecution that the bunch of keys of the deceased was found in constructive custody of the accused. It was discovered in the black rexine bag that was kept by the accused in the guardroom in presence of police constable Bhiva Parab (PW-6).

9. The evidence regarding discovery of the keys of the deceased, at the instance of the accused, can usefully be considered here itself. The accused is shown arrested on 9.12.1996 at 7.10 hours vide panchanama (Exh. 39). The black rexine bag is said to

have been recovered from the armory, or guardroom, under memorandum and panchanama (Exhs.30 and 30-A) in presence of panch witness Suresh Patil (PW-10). This memorandum and panchanama is drawn between 19.00 hours to 21.30 hours. It is claimed that black rexine bag was given out by the accused and the bag was containing a bunch of six keys, another bunch of five keys and there was a third bunch of keys. In addition, there were two haxoblades. This discovery evidence is challenged by the defence, on the basis of statement by PW-2 Dilip Waingankar. In paragraph 6, Dilip has deposed that, on 9.12.1996, he was shown one day book, four cash books, one RBI voucher book, a calculator and three key bunches. He had seen all these articles with the deceased Prabhudas on 7.12.1996 at 6.30 p.m. On reference to panchanama (Exh.24), it is evident that the cashbook, day book, challan book, a calculator etc. are the articles recovered at the location of the occurrence, on 9.12.1996 at 11.05 hours. Thus, what articles are claimed to have been identified by him when shown to him during office hours, by PW-2 Dilip, appear to be the articles recovered under pancahanamas (Exhs. 24, 30 and 30-A). The defence was certainly justified in attacking exhibits 30 and 30-A. The seizure of three bunches of keys of the deceased, under these pancahanamas, has taken place at late evening hours of 9.12.1996. Consequently, three bunches of keys could

not have been identified by PW-2, during office hours. Unfortunately for the defence, the prosecution has another opening, by which it has established constructive custody of the keys, with the accused. PW-6 Bhiva was on duty on 8.12.1996 at armory guard. On that day, the accused had kept the rexine bag in the guardroom in presence of PW-6 Bhiva. In fact, deposition of Bhiva makes the claim of discovery of the rexine bag at the instance of accused, a futile exercise. The existence of the bag at the armory was known to Bhiva and could have been known to investigating agency, even without arrest of and statement by the accused. Except bare suggestion to Bhiva that, the accused had not kept the bag at guardroom, there is no substance in the cross examination of Bhiva that will make us skeptic about reliability of Bhiva. Thus, even if we are to disbelieve the evidence led in the form of memorandum / statement at Exhibits 30 and 30-A, the prosecution has evidence on record, which proves constructive custody by the accused over the keys of the deceased and it is needless to say that, this is a clinching circumstance going against the accused.

10. Last seen together. The prosecution has examined two witnesses on this issue, i.e. PW-8, the widow of the victim and PW-11 Anish, the minor son of

the victim. So far as son Anish is concerned, although learned trial judge has followed all the rituals of ascertaining whether the witness is capable of understanding the questions and answers those rationally, whether he is tutored and whether he understands sanctity of oath and thereafter he is examined as a witness, we think it appropriate to keep the child witness out of reckoning for the simple reason that, the child witness was 11 years old when he deposed from the witness box and the deposition was recorded on 28.3.2001, which was nearly four years and two months after the incident. It can be calculated that the child was hardly 6-7 years old at the time of incident. The trial judge discussed evidence of Anish in paragraph 22 of his judgment and shown inclination to believe him. The observation of the trial judge that during the cross-examiantion of the child witness, the defence has not been able to demonstrate that he is a tutored witness, appears to be justifiable, but taking into account the age of the child at the time of incident and the time gap between the date of incident and the date of his deposition. We feel it unsafe to place reliance upon the child witness and hence, we are considering evidence of Kalpana alone, on the point of last seen together.

. It must be borne in mind that, in criminal

trials, principle **falsus in-uno, falsus in omnibus**, is not applicable. Even if a witness is believed to be telling some falsehood, or even if it is believed that the prosecution has come with some pieces of evidence, which are false, the witness or the prosecution cannot be thrown overboard. The court is always required to perform the exercise of separating the grain from the chaff. Only when the truth and falsehood are inexplicably mixed together, and they cannot be disengaged from each other, the court would be justified in discarding the evidence of that witness, or prosecution story. In fact, in the light of this settled principle, we have shown inclination to believe the prosecution story of custody of key bunches of the victim, with the accused for reasons different than those relied upon by the prosecution, in earlier discussion.

. Coming to the evidence of Kalpana, she has narrated two visits of the accused on 7th evening. According to her, after the first visit, when the accused gave a message that the victim was called by superior Shri Patil, the deceased ascertained by telephonic talk, in all probability to PW-1 Pradip, whether he was so called, and having arrived at a conclusion that the message was untrue, he did not go with the accused. It was on the second occasion, after

dinner, that the accused could persuade the victim to depart with him. This story of departure of the victim with the accused, is supported by Kalpana, by deposing about her efforts to trace out the accused on 8th December, 1996. According to Kalpana, she initially went to PTS, Marol on the next morning, as the husband did not return during whole night. She learnt that her husband had not gone there on the previous night. She, therefore, secured assistance of her niece Seema Shedge and nephew Santosh Shedge. Together, they went to PI Shri Suryawanshi. She also spoke to couple of colleagues of the victim, namely, Sanap and Khamkar. According to her, they suggested her that she should search the person with whom her husband had departed on the former evening and, therefore, she diverted her enquiry with Shantaram Savant (PW-15), who is maternal uncle of the accused. This portion of deposition of Kalpana lends very strong assurance to her claim that she had knowledge of departure of her husband with some one (accused). That is why during the conversation, Sanap and Khamkar suggested her to enquire with the person with whom her husband had departed. She must have expressed to Shri Sanap and Shri Khamkar that, the husband had gone away with the accused and that is why the colleagues of the deceased suggested Kalpana to find out that person first. Kalpana’s action of approaching Sawant family fully corroborates her claim that her

husband, while departing on the former evening, had informed her not to worry, disclosing that the person with whom he was going away, was the nephew of Shri Sawant. The witnesses can tell lies, but reactions to the fact-situation are always honest to the truth. That Kalpana had been to Sawant family in search of the accused, is a story fully supported by Shantaram Sawant, who is close relative of the accused. According to PW-15 Shantaram, on 8.12.1996, Kalpana had come to his residence and she was enquiring whereabouts of nephew of Shantaram. Since Kalpana disclosed that, her husband had gone away with nephew of Shantaram and was missing, he took Kalpana to Dongri police line, Goregaon but accused was not available at home. The mother of the accused showed a photograph and Kalpana identified him to be the person with whom the husband had departed on the former evening. Shantaram has supported further story that, when he returned home, Praful was already there and Kalpana identified him as the person, who had taken away her husband on the former night.

. No doubt, Shantaram admitted that on his enquiry, accused denied to have taken the victim with him on the previous night. Much emphasis was led by learned counsel for the appellant upon answer to question No. 52, by accused in his statement under Section 313 of the Cr.P.C., wherein he has claimed that,

Kalpana enquired him, whether he was the person who had taken away her husband. Negative answer to PW-15 Shantaram, or answer to question No. 52 by the accused, can be seen to be self-serving reaction and need not be given much importance. The loss of the photograph and casualness for the reason for loss of photograph, as has occurred in the deposition of Kalpana, is also required to be discarded. Even if, we take into consideration that the medical evidence contradicts Kalpana to some extent, because post mortem notes indicate that the victim was empty stomach, thereby posing a challenge to the story of Kalpana that the victim was taken away after dinner, the reactions of Kalpana certainly confirm that she had knowledge of departure of her husband with nephew of PW-15 Shantaram Sawant and this story can stand firmly confirmed, even if we draw inference, and utmost adverse to the deposition of Kalpana, i.e. Kalpana did not see the accused and her husband departing together.

. Evidence of Kalpana, duly supported by PW-15 Shantaram is strong enough to draw conclusion that, Kalpana was certainly aware of her husband having departed with nephew of PW-15 Shantaram, irrespective of the fact whether she had seen that nephew or not and also irrespective of the fact, whether the victim departed without dinner. The portion from post mortem

notes, indicating the victim to be empty stomach, therefore, is not weighty enough to demolish Kalpana's deposition, which claims knowledge of departure of victim with the accused. We are, therefore, inclined to hold that Kalpana's evidence that the deceased had departed with the accused, is acceptable and the prosecution has established this circumstance with reliable evidence.

11. For the reasons discussed in paragraphs 27 to 29, learned trial judge has repelled the argument of the defence that the document at exh.22 (and not exh.51), is the FIR. Exh.22 is the statement of Kalpana, which was treated as missing report, by the police authorities. Exh. 22 was recorded on 8.12.1996 at about 5.15 p.m. In the said statement, Kalpana has given all the details as to how her husband was taken away by the accused. In fact, she had traced out the accused from his relatives and presented him before the police. The concluding part of Exh.22 shows that Kalpana had also expressed doubts against the accused, because he was evasive in answers, when he was questioned regarding whereabouts of the deceased. Exhibit 51 is a statement by trainee PSI Dilip Shinde. His narration in the said complaint commences from the time the statement of Kalpana was recorded and she had presented the accused at the police station. It also gives details of the interrogations of

the accused and how he initially misguided the police, saying that the deceased, along with PW-2 Waingankar and one Dalvi, were in a hotel at Panvel. It also records as to how Panvel trip turned out to be futile, how accused was further interrogated and the entire narration of the accused, which amounts to confession. It is evident from the contents of Exh. 51 that this statement of PSI Shinde was recorded only after police authorities had ascertained truthfulness of the response of the accused to second interrogation, after return from Panvel. Only after the dead body was seen in pipe, this statement of PSI Shinde was recorded and registered as FIR on 9.12.1996 at 07.00 hours.

. Because nobody had any idea about the death of Prabhudas and that it was caused by the accused, learned trial judge was disinclined to accept the defence submission that Exh.22 is not the FIR, within the meaning of Section 154 of Cr.P.C. Although learned Judge agreed that the confessional part in Exh.51 is inadmissible in evidence, because of the bar created by section 25 of the Evidence Act, after reproducing section 154, learned Judge observed that there was no infirmity (error) in recording the complaint (registering the offence) on the basis of complaint by PSI Shinde.

. Earliest FIR without loss of time, has its own importance, because the court is likely to get truthful account of the incident, when the informant had no time to premeditate. With the passage of time, there arises risk of embellishment creeping into the truthful account of the incident. In the matter at hands, there being no eye witness account, nor FIR being by person who is either a victim, or an eye witness of the incident, we feel that the issues, as to which document is the FIR, whether there was delay in lodging the same, are not of much importance. As per section 154 of the Code of Criminal Procedure, every information relating to the commission of the cognizable offence given to an officer in charge of the police station at the earliest, is the FIR. In the matter at hands, Exh. 22 had clearly expressed suspicion against the accused. The details provided therein, at least indicated that the accused had managed to take away the victim under the pretext that he was called by his superior, although the deceased was not so called. We are inclined to disagree with the learned trial judge and we hold that Exh. 22 was the FIR, even if, by that time it was not ascertained that Prabhudas was killed. However, this observation does not put the prosecution in any way in a disadvantageous position. Exhibit 22, if treated as FIR, is available to the prosecution not only to contradict, but also to corroborate oral evidence of

Kalpana and that strengthens our observations in the paragraph above, that she certainly had knowledge that her husband had departed with nephew of PW-15 Shantaram. Exhibit 22 was registered immediately after the accused was traced out by Kalpana and she had no time to think and add falsehood. From that angle, Exhibit 22 would be more reliable, and support by Exh.22 makes the evidence of Kalpana, more convincing.

12. **Discovery of dead body and articles of the deceased at the instance of the accused.** As many as three policemen i.e. Yusuf Mulla (PW-5), PSI Dilip Shinde (PW-20) and PI Sonar (PW-21) have deposed that, after recording statement of Kalpana, accused who was presented by her to the police station, was interrogated. Initially, he dogged police, by misguiding them to a hotel at Panvel in search of the deceased. However, subsequently, he admitted the guilt and led the police party to location, where the dead body was found in a pipe, by the side of Jogeshwari-Vikroli link road. Some of the articles, which the deceased had carried with him, are also said to have been recovered from the location. These proceedings are recorded by Exh.24. As already observed by us, Exh. 24 is a composite document, which records that the accused guided the police to the spot of

incident. It also records description of the location and the details noticed there, and it also records description of the dead body. Thus, this document is a discovery panchanama plus spot panchanama plus inquest.

. The defence was certainly justified in accusing the prosecution of not making proper documentation of the prosecution claims, regarding willingness of the accused to show the location and consequent discovery of dead body at the instance of the information given by the accused. Eventually, it can be said that the statement of the accused is never recorded, and if at all the same has come on record, it is in the form of narration by PSI Shinde, which is registered by police station as FIR (Exh. 51). Thus, Exhibit 51, to some extent; is a substitute to memorandum of statement of the accused. Certainly prosecution has not recorded memorandum of statement of accused, duly signed by him. The point to be considered is whether the failure on the part of the investigating machinery to make proper documentation of the discovery should be sufficient to disbelieve the discovery of the dead body, at the instance of the accused.

. On reference to section 27 of the Indian Evidence Act, it does not cast any duty on the police officer to record statement of the accused, or to record

a panchanama as to how accused guided police to the fact, or articles of discovery. Recording of memorandum and panchanama is a rule of convention and the practice emerged as a necessity for the investigating officer, who is expected to give accurate account of the investigation and pieces of evidence collected during the same, to the court, when he enters the witness box. The investigating officers do not get luxury of handling only one case at a time, till it is decided by the court. Number of cases are investigated by each of the investigating officers and at times, they are required to investigate more than one cases on a given day. The convention of reducing the events in writing, in the form, either of memornadum, or panchanama, therefore, has become a necessity. Police Officer always has a liberty to refresh his memory, by referring to a document, wherein he has recorded the details of the events about which he is required to give evidence. The account of the events recorded, immediately after the event, or at least when the events are fresh in the memory, is a reliable document that enables the police officer to refresh his memory and the defence to contradict him, in case he deviates from the same. If the courts start looking to the prosecution evidence with disbelief, because the investigating agency has not prepared proper documents, that may have an effect of leaving the decision of the case into the hands of

investigating officers, and more so, in the cases, where the investigating officer is mischievous. We are, therefore, not inclined to disbelieve the story that the accused pointed out the dead body and spot of occurrence to the police, merely because proper memorandum and panchanama are not recorded.

. Evidence of these three police officers is supported by panch witness Arvind Virkar (PW-9). Due to faulty documentation of the discovery of dead body, evidenciary value of evidence of PW-9 Arvind is also substantially reduced. He is not a panch witness, who has heard the accused showing williness to point out the dead body, but he is the witness to panchanama (Exh.24), when he went to the location after noticing that the policemen and the police vehicle were present there. Otherwise, it is his claim that he was independently searching for the victim. According to Arvind, accused was very much present with the police, when he went to location, seeing a congregation of policemen and a vehicle. Panchanama (Exh.24) appears to have commenced at 8.10 hours and concluded at 11.05 hours on 9.12.1996. Arvind has not faltered even on that count, to the prosecution. According to him, he had been to the spot at about 8.00 a.m. In fact, Pws. 5,20 and 21 make no secrete that they had gone to the location as guided by the accused, without any panchas, in the early dawn and

dark hours. Therefore, strictly speaking, PW-9 is not a panch witness to the statement of the accused, or discovery at the instance of the accused. This is because, dead body was already discovered before PW-9 came into picture. Naturally, the question to be considered is, whether PWs. 5,20 and 21 are reliable, in their claim that the dead body was discovered at the instance of information by the accused. Having gone through cross examination of all three police witnesses, we do not find any material that would suggest the discovery of dead body, without assistance of the accused, or at a point of time earlier than the time, it was shown to police personnel, by the accused.

. No doubt, the victim was a policemen, but so was the accused. It would be possible that massiv hunt must have commenced as soon as Kalpana reported that her husband, a person of the department, was missing. Yet, the accused himself being the policeman, it cannot be perceived the investigating agency will haul him up, by allowing real culprit to go scot-free. There does not appear any suggestion of earlier animosity between the accused on one side and any of the prosecution witnesses on the other.

. In spite of some infirmities and defects in properly recording the discovery, we are inclined to

believe that, the discovery of the dead body at the instance of the accused is established by the prosecution. After all, the fact that the accused made statements, is admitted by the courts, only in the light of section 27 of the Evidence Act, although such statements are confessional and addressed to the police officers while accused is in policy custody on the principle of confirmation by discovery. On record, there is no material to probabalize that the dead body was discovered, much before the time at which it is said to have been discovered at the instance of the accused.

13. Coming back to the controversy, regarding which document is FIR, in the written arguments submitted by learned Counsel for the appellant, it is claimed that Exh.47, and not Exh.22, was the FIR. In the deposition of PSI Shri Shinde, it has come that he took an entry in the station diary at serial No.30, immediately after Exh.22 was recorded (extract of station diary at exh.46) and similar entry was taken in the missing register at serial No.103 (Exh.47). Exhibits 46 and 47 being excerpts of Exh. 22 entered in the police station record, those cannot be given precedence over Exh. 22 and thus status of the FIR. The submission to that effect is, therefore, required to be referred and rejected. It is not the deposition of PSI Shinde that the diary entry was taken first and then only statement

of Kalpana was recorded.

. The arguments of the defence that the police did not try to find out an independent witness, or rickshaw driver, who could have seen the victim and the accused being together while travelling to the location, does not impress us, for the simple reason that in Bombay, every passer-by may not be knowing other. Moreover, if the couple met any one of the acquaintance, that could have been disclosed to police, either by the accused or by the deceased. The first one is privileged to keep silence and the second one is silenced by destiny, probably at the hands of first one. The reference to rickshaw driver, in all probability, seems to have been taken by the defence, from the statement of the accused as reflected in Exhibit 51. If the statement is not admissible, either because the same is not the FIR, or because it is hit by section 25 of Evidence Act, the same is not admissible for both, the prosecution as well as defence and the defence cannot be allowed to pick-up certain details from such a statement and invite the prosecution to explain those.

14. By comparing Exhs. 24,35 and 39, the defence has claimed that the prosecution has claimed seizure of in all three shirts, one on the person of the deceased, one on the person of the accused and one shirt of the

accused from the residence of his father. But, in fact, the list of articles contained only two shirts. On reference to Exh.39, this submission does not appear to be accurate. This panchanama concludes, by saying that, articles found in the search of the person of the accused were seized, i.e. cash Rs.2084, identity card, goggle, wrist watch and a key bunch. It does not talk about seizure that of clothes was worn by the accused, at the time of arrest. The argument that, the police might have played mischief, based on absence of one shirt, is, therefore, not sustainable.

. We are not relying upon the story of three buttons found at the location and shirt seized under Exh. 35 from the residence of the father of the accused at the instance of accused, was having three buttons lost. In fact, we are not inclined to accept the argument that the police might have painted such a picture. But we are inclined to believe Exh. 35 to the extent of seizure of shirt and pant of the accused along with a pair of boots from the residence of his father. The shirt was sent to Chemical Analyzer and although the C.A. report at Exh. 8 fails to determine the blood group, fact remains that the shirt of the accused also had blood stains of human blood. Panchanama of arrest at Exh. 39, does not record any injury to have been suffered by the accused. May be a weak, but the

circumstance that the shirt of the accused given out by him to the police bears stains of human blood, has its own weight.

. We have gone through the written arguments submitted by Advocate Shri Pitale and we find it needless to meet each and every argument from those. We find that some of the arguments also contain incorrect statements of fact For example, in ground IX(h), it is pleaded that the medical officer has admitted that the injury Nos. 1 and 2 in column No. 17 were caused by sharp weapon. Such a submission is against the record. In the deposition, Medical Officer has said;

> " It is not true to say that injuries no. 1 and 2 in column 17 were caused by sharp weapon. The witness volunteers that sr.no. 1 and 2 injuries speak about Incised like wound and not about Incised wound. "

. In written arguments, evidence of PW-4 Joshi, ASI, is tried to be contradicted, by referring to the contents in the judgment delivered by 22nd court of Metropolitan Magistrate in in case No. 319/P/97, dated 26.04.1999. This judgment was not referred during the course of arguments before us, nor that appears to have been confronted to PW-4 during the course of his cross

examination to contradict him, by pointing out that he had deposed something different before other court, regarding occurrence on 7th or 8th December, 1996.

. We have not placed reliance on evidence of PW-11-the child Anish, nor are we placing reliance upon the circumstance of missing buttons of the shirt and, therefore, we have not discussed those aspects at length.

15. To sum up, we are convinced that the prosecution has established following circumstances.

(i) Deceased had gone away with the accused on 7.12.1996 evening and thereafter he was not seen alive by any one. (PW-1 Kalpana and PW-15 Shantaram).

(ii) The dead body was discovered in the early dawn hours of 9.12.1996, at the instance of the accused at a location at Jogeshwari-Vikroli link road, in a pipe, together with some articles, which the deceased had carried with him. (PW-5 Yusuf Mulla, PW-20 PSI Shinde and PW-21 PI Sonar).

(iii) Key bunches of the deceased were in constructive custody of the accused, who had kept those in the armory or guardroom in a black rexine bag. (PW-6 Bhiva and PW-4 ASI Joshi).

(iv) Bad habits of accused and his consistent need for money. (PW-12 Ramchandra, PW-17 Sudhakar-father of the accused, and PW-18 Chandrakant).

(iv) Story that the accused initially misguided the police, by diverting to Panvel hotel (PWs, 5, 20 and 21).

Although prosecution is not very certain about the

motive, upon taking into consideration the evidence of PW-4 and PW-6, a faint probability is created, regarding intentions of the accused to lay hands on the cash which could have been in possession of the victim, as against the initial story that the accused was enraged against the victim, because the victim used to tease him on the point of his marriage with a bar girl Helen Fernandes. Motive is a mental state, which is always locked in the inner compartment of the brain of the accused and inability of the prosecution to establish the motive need not necessarily cause entire failure of prosecution.

. We feel that although **'last seen together'** alone would not be the circumstance requiring to draw an inference of accused being culprit, but that circumstance requires the accused to speak and explain as to when did he part with the company of the victim, unless he can probabalize from the prosecution evidence that the victim alone was seen alive by somebody, after the time he was last seen together with the accused. The defence has neither the version of the accused as to when he parted with the company of the deceased, nor the probability as above. When the accused has guided the police to the location of the dead body and when there is a possibility created by the prosecution that the accused intended to lay hands on the cash in the custody

of the deceased, when the bunches of keys of the deceased could be seen to be in the custody of the accused and when the shirt of the accused is stained with human blood, cumulative effect of these circumstances unerringly points towards the accused being the killer.

16. For the reasons discussed hereinabove, the appeal fails and is, therefore, dismissed.

. Registrar (Judicial) shall ensure supply of a certified copy of this judgment, free of costs; to the appellant through the prison authorities.

(V.K. Tahilramani, J.) (N.V. Dabholkar, J.)

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